

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIEL CUNNINGHAM and DEBRA
DE SALVO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

DG3 NORTH AMERICA, INC, JOHN
HANCOCK INVESTMENT MANAGEMENT,
LLC, AND UBS FINANCIAL SERVICES, INC.,

Defendants.

Case No.: 2:24-cv-07385

**PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
I. The Proceedings and Class Counsel’s Efforts Leading to the Settlement	2
II. The Settlement Agreement and Settlement Class Member Benefits	4
III. The Settlement Class’s Positive Response to The Settlement	5
ARGUMENT	5
I. Class Counsel’s Request for Attorneys’ Fees Is Reasonable and Authorized by the Settlement Agreement	5
A. The Percentage-of-Recovery Method Is Proper When Awarding Fees in a Common Fund Case	6
B. Precedent Establishes Class Counsel Are Entitled to a Fee of One-Third of the Settlement Fund	8
1. One-Third of the Settlement Fund Is Reasonable	8
2. No Lodestar Analysis Is Required	10
3. Calculating the Fee Based on Settlement’s Overall Value Is Appropriate	11
C. Additional Relevant Factors Support the Requested Fee Award	12
1. Whether the Fee Was Fixed or Contingent	13
2. The Time and Labor Required, the Size of the Fund Created, the Number of Persons Benefiting from the Settlement, the Novelty and Difficulty of the Questions Involved, and the Skill, Experience, Reputation, and Ability of Counsel Required to Perform the Service Properly	15
3. The Current Absence of Objections to the Attorneys’ Fee Request Supports Approval	16
4. The Requested Attorneys’ Fees Are Reasonable When Compared to Awards in Similar Cases and What Would Have Been Contracted in a Private Contingency Matter	17

II. Class Counsel Should Be Awarded Reimbursement of Litigation Costs.....18

III. The Requested Service Awards to Class Representatives Are Reasonable19

IV. The Settlement Administration Costs Are Reasonable20

CONCLUSION.....20

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Bodnar v. Bank of Am., N.A.</i> , 2016 WL 4582084 (E.D. Pa. Aug. 4, 2016)	10, 11
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	7, 8
<i>Braun v. Phila. Inquirer, LLC</i> , 2025 U.S. Dist. LEXIS 85786 (E.D. Pa. May 6, 2025)	9
<i>Bredbenner v. Liberty Travel, Inc.</i> , 2011 WL 1344745 (D.N.J. Apr. 8, 2011)	19
<i>Chakejian v. Equifax Info. Servs., LLC</i> , 275 F.R.D. 201 (E.D. Pa. 2011)	14
<i>Fanning v. Acromed Corp.</i> , 2000 WL 1622741 (E.D. Pa. Oct. 23, 2000)	17
<i>Fickinger v. C.I. Planning Corp.</i> , 646 F. Supp. 622 (E.D. Pa. 1986)	7
<i>Fleisher v. Phoenix Life Ins. Co.</i> , 2014 WL 10847814	11
<i>Goldberger v. Integrated Res., Inc.</i> , 209 F.3d 43–49 (2d Cir. 2000)	10
<i>Gunter v. Ridgewood Energy Corp.</i> , 223 F.3d 190, n.1 (3rd Cir. 2000)	12, 15, 16
<i>Hall v. AT&T Mobility LLC</i> , 2010 WL 4053547 (D.N.J. Oct. 13, 2010)	9, 16
<i>Hall v. Cole</i> , 412 U.S. 1 (1973)	8
<i>Hanrahan v. Britt</i> , 174 F.R.D. 356 (E.D. Pa. 1997)	19
<i>Huguley v. General Motors Corp.</i> , 128 F.R.D. 81 (E.D. Mich. 1989)	19
<i>In re AT&T Corp.</i> , 455 F.3d 160 (3d. Cir. 2006)	6, 10, 12, 13, 16

In re Certainteed Fiber Cement Siding Litig.,
303 F.R.D. 199 (E.D. Pa. 2014)18

In re Datatec Sys., Inc. Sec. Litig.,
2007 WL 4225828 (D.N.J. Nov. 28, 2007)13, 16

In re First Fid. Bancorporation Sec. Litig.,
750 F. Supp. 160 (D.N.J. 1990)7

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995)6, 9

In re Genta Sec. Litig.,
2008 WL 2229843 (D.N.J. May 28, 2008)16, 17

In re Ikon Office Solutions, Inc. Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000)7

In re Ins. Brokerage Antitrust Litig.,
2007 WL 1652303 (D.N.J. June 5, 2007)11

In re Janney Montgomery Scott LLC Fin. Consultant Litig.,
2009 WL 2137224 (E.D. Pa. July 16, 2009)13

In re Onix Grp., LLC Data Breach Litig.,
2024 U.S. Dist. LEXIS 225686 (E.D. Pa. Dec. 13, 2024)14, 17

In re OSB Antitrust Litig.,
2008 U.S. Dist. LEXIS 125173 (E.D. Pa. Dec. 9, 2008)16

In re Phila. Inquirer Data Sec. Litig.,
2025 U.S. Dist. LEXIS 4854111, 12

In re Phila. Inquirer Data Sec. Litig.,
2025 U.S. Dist. LEXIS 48541 (E.D. Pa. Mar. 18, 2025)9, 17

In re Philips/Magnavox TV Litig.,
2012 U.S. Dist. LEXIS 67287 (D.N.J. May 14, 2012)19

In re Prudential Ins. Co. of Am. Sales Practices Litig.,
148 F.3d 283 (3rd Cir. 1998)6

In re Prudential-Bache Income Partnerships Sec. Litig.,
1994 WL 202394 (E.D. La. May 18, 1994)14

In re Prudential,
962 F. Supp. at 542–438

In re Remeron Direct Purchaser Antitrust Litig.,
 2005 WL 3008808 (D.N.J. Nov. 9, 2005)17, 18

In re Remeron,
 2005 WL 223031419

In re Rite Aid Corp. Sec. Litig.,
 146 F. Supp. 2d 706 (E.D. Pa. 2001)10

In re Rite Aid Corp. Sec. Litig.,
 362 F. Supp. 2d 587 (E.D. Pa. 2005)11

In re Rite Aid Corp. Sec. Litig.,
 396 F.3d 294 (3rd Cir. 2005)6, 10, 11, 16

In re Safety Components, Inc. Sec. Litig.,
 166 F. Supp. 2d 72 (D.N.J. 2001)15

In re Suprema Specialties, Inc. Sec. Litig.,
 2008 WL 906254 (D.N.J. Mar. 31, 2008)10

In re Valeant Pharms. Int'l, Inc. Sec. Litig.,
 2020 WL 3166456 (D.N.J. June 15, 2020) *adopted* 2021 WL 358611 (D.N.J. Feb. 1, 2021) ...11

In re Warfarin Sodium Antitrust Litig.,
 391 F.3d 516 (3d Cir. 2004)9

In re WorldCom, Inc. Sec. Litig.,
 388 F. Supp. 2d 319 (S.D.N.Y. 2005)6

Lachance v. Harrington,
 965 F. Supp. 630 (E.D. Pa. 1997)7

Lindy Bros. Builders of Philadelphia v. Am. Radiator & Standard Sanitary Corp.,
 540 F.2d 102 (3d Cir. 1976)13, 14

Mehling v. N.Y. Life Ins. Co.,
 248 F.R.D. 455 (E.D. Pa. 2008)15

Mills v. Electric Auto-Lite Co.,
 396 U.S. 375 (1970)8

Office Sols.
 194 F.R.D.7, 9, 13, 17

Oh v. AT&T Corp.,
 225 F.R.D. 142, 146 (D.N.J. 2004)13, 18

Public Interest Research Group v. Windall,
 51 F.3d 1179 (3d Cir.1995)12

Reynolds v. Marymount Manhattan College,
 2023 U.S. Dist. LEXIS 191993 (S.D.N.Y. Oct. 23, 2023)14, 15

Savoie v. Merchants Bank,
 166 F.3d 456 (2d Cir. 1999)10

Stevens v. SEI Investments Co.,
 2020 WL 996418 (E.D. Pa. Feb. 28, 2020)10

Sullivan v. DB Inv., Inc.,
 667 F.3d 273 (3d Cir. 2011) (en banc)5, 6

Ursic v. Bethlehem Mines,
 719 F.2d 670 (3d Cir. 1983)5

Velez v. Novartis Pharm. Corp.,
 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010)11

Rules

Federal Rule of Civil Procedure 23 *Passim*

Other

5 Newberg on Class Actions § 17.819

Pursuant to Federal Rule of Civil Procedure 23(h) and consistent with the Settlement Agreement¹ reached in this Action, Plaintiffs and Class Counsel respectfully request the Court award attorneys' fees and costs to Class Counsel and Service Awards to the Class Representatives, and approve payment of the Settlement Administration Costs. This Application for Attorneys' Fees, Costs, and Service Award is supported by the Joint Declaration of Class Counsel attached as Exhibit B to Plaintiffs' Motion for Final Approval ("Joint Dec." filed contemporaneously with this Motion), and the Declaration of Cameron R. Azari of Epiq, regarding implementation and Adequacy of Notice Program ("Admin Dec." attached as Exhibit C to Plaintiffs' Motion for Final Approval).

INTRODUCTION

Class Counsel diligently and vigorously prosecuted this Action to reach the Settlement Agreement with Defendants, representing an outstanding result for the approximately 52,984 members of the Settlement Class. The Settlement secures substantial Settlement Class Member Benefits through a non-reversionary Settlement Fund in the amount of \$600,000.00, established to pay Valid Claims for Documented Losses or Alternative Cash Payments and Credit Monitoring, and providing significant value to the Settlement Class. Specifically, the Settlement Fund will be used to pay all Settlement Class Members' Valid Claims for (a) reimbursement of Documented Losses, up to \$2,500.00 per Settlement Class Member, or (b) Alternative Cash Payments, up to \$100.00 for Group 1 Settlement Class Members and \$50.00 for Group 2 Settlement Class Members and subject to *pro rata* increase up to \$200.00 and \$50.00, respectively. SA ¶¶ 83, 94–99, 139.

Pursuant to the Agreement and consistent with the Notice to the Settlement Class, Plaintiffs

¹ Capitalized terms herein have the same meaning as in the Settlement Agreement, attached as *Exhibit A* hereto, and abbreviated here as "SA."

now request an attorneys' fee award to Class Counsel of one-third of the Settlement Fund (\$200,000.00). *Id.* ¶ 144. Additionally, in accordance with the Agreement and Notice and subject to Court approval, Class Representatives seek Service Awards of \$2,500.00 each. *Id.* ¶ 143.

Obtaining this relief for the Settlement Class was not certain. On a wholly contingent fee basis, Class Counsel shouldered significant risk and expenses, without which the results achieved would not have been possible. Joint Dec. ¶¶ 42-3. Class Counsel invested substantial time and costs to investigate, initiate, and litigate this Action for Plaintiff and the Settlement Class, and will spend additional time preparing for and attending the Final Approval Hearing and working with Defendants and the Settlement Administer to ensure the Settlement is fully implemented after Final Approval. *Id.* ¶¶ 22, 44. The record reflects efficient and effective pleading and good faith, arm's-length negotiations giving rise to the Settlement, following the Parties engaging in informal discovery on the merits of the Action, exchanging comprehensive mediation statements detailing their respective positions, and holding a full-day mediation with an experienced class action mediator. *Id.* ¶¶ 10-3, 44. Only after this significant work was done did the Parties settle. *Id.*

As established herein, the requested attorneys' fees and Service Awards, and Class Counsel's requested cost reimbursements, are fair and reasonable under the applicable legal standards, and in light of the contingency risk undertaken and the result achieved should be awarded.

BACKGROUND²

I. The Proceedings and Class Counsel's Efforts Leading to the Settlement

This Action arises from a March 2024 Data Incident impacting Defendant DG3's systems

² Plaintiffs' Motion for Final Approval contains a detailed discussion of the Action's background and procedural history, which for brevity Plaintiffs incorporate here. *See* Motion for Final Approval, filed contemporaneously, at 2–3.

and potentially resulting in the unauthorized access to or acquisition of Settlement Class Members' Private Information. SA ¶ 35. Prior to filing the Action, Class Counsel conducted a thorough investigation of the Data Incident, including reviewing media reports concerning the event, interviewing Plaintiffs, researching potential claims on behalf of the putative class, and determining Defendants' respective relationships to the Data Incident and to each other. Joint Dec. ¶ 29. Class Counsel then prepared and filed Plaintiffs' initial complaints and later, the Amended Complaint in this Action, alleging claims for negligence/negligence *per se*, breach of implied contract, breach of third party beneficiary contract, breach of fiduciary duty, breach of confidence, unjust enrichment, and violation of the Illinois Consumer Fraud Act. *Id.* ¶ 9; SA ¶ 9.

Shortly thereafter, the Parties began discussing settlement and scheduled a mediation with former Magistrate Judge and experienced class action mediator Morton Denlow. Joint Dec. ¶ 10. In advance of the mediation, Plaintiffs propounded informal discovery requests, to which Defendant DG3 responded by providing information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of victims impacted, and the specific type of information breached. *Id.* ¶ 11. The Parties also exchanged comprehensive mediation statements outlining their respective positions in advance of the mediation. *Id.* Additionally, the Parties sought a stay of the Action, including the time for Defendants' response to the Complaint, while the Parties explored the possibility of settlement and participated in mediation. *Id.* ¶ 10.

On May 28, 2025, the Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement. Dkt. 39. In the Preliminary Approval Order, the Court preliminarily concluded the Settlement was fair, reasonable, and adequate within the meaning of Rule 23, the proceedings had afforded Class Counsel the opportunity to assess the claims and defenses in the Action, and the

Settlement was reached following vigorous and intensive arm's-length negotiations. *Id.* The Court also provisionally certified the Settlement Class for settlement purposes. *Id.* Finally, the Court approved the Notice Program, which the Court found to satisfies "Rule 23, due process, and constitutes the best notice practicable under the circumstance," and scheduled a final approval hearing for October 14, 2025. *Id.*

Thereafter, the Settlement Administrator commenced the Notice Program and began overseeing the Claim submission process. *See generally* Admin. Dec. Class Counsel have worked with the Settlement Administrator and Defendants' Counsel since Preliminary Approval to effectuate Notice and facilitate the Claims Process. Joint Dec. ¶ 20. The Notice Program has now been completed in full compliance with the Agreement and the Preliminary Approval Order. Admin Dec. ¶¶ 38–41.

II. The Settlement Agreement and Settlement Class Member Benefits

Defendant DG3, on behalf of all Defendants, agreed to create a non-reversionary Settlement Fund in the amount of \$600,000.00 to pay Settlement Class Member Benefits to all Settlement Class Members who file a Valid Claim. The terms of the Settlement and the Settlement Class Member Benefits are set forth in the Settlement Agreement and outline in the Motion for Final Approval.

The Settlement Fund will be used to pay (a) attorneys' fees up to one-third of the Settlement Fund (\$200,000.00) and reimbursement of litigation costs to Class Counsel, and (b) Service Awards of \$2,500.00 to each Class Representative. SA, ¶¶ 143–44. The Notice advised the Settlement Class of these contemplated requests for attorneys' fees and costs and Class Representative Service Awards, and presently no Settlement Class Member has objected to the amount requested. Admin Dec. ¶ 32.

Critically, the Parties did not discuss or negotiate attorneys’ fees and costs or Service Awards until they agreed on the material Settlement terms benefiting the Settlement Class. Joint Dec. ¶ 14. In so doing, Class Counsel and Plaintiffs avoided conflict with Settlement Class’s interests, thereby fulfilling their responsibilities to the Settlement Class.

III. The Settlement Class’s Positive Response to The Settlement

The Settlement Administrator has disseminated Notice to Settlement Class in accordance with the Notice Program. Admin Dec. ¶¶ 23–36. The Notice materials clearly delineate the Settlement’s terms and Class Counsel’s intention to file this Application for Attorneys’ Fees, Costs, and Service Awards. *See* SA.

The Opt-Out Period and Objection Period end on September 15, 2025. Admin Dec. ¶ 32. To date, not one Settlement Class Member has objected to the Settlement or to the requested attorneys’ fees, costs, and Service Awards. *Id.* Additionally, only one member of the Settlement Class has opted out. *Id.* These factors are indicative of a successful Settlement, even if additional opt-outs occur or if any objections are submitted. If an objection is made to the requested attorneys’ fees and cost award or the Service Awards, Class Counsel will address it in a filing before the Final Approval Hearing.

ARGUMENT

I. Class Counsel’s Request for Attorneys’ Fees Is Reasonable and Authorized by the Settlement Agreement.

Federal Rule of Civil Procedure 23(h) permits class counsel to apply for court-awarded attorneys’ fees at the conclusion of a successful class action. The amount of a fee award “is within the district court’s discretion so long as it employs correct standards and procedures and makes finding of fact not clearly erroneous.” *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (*en banc*) (internal quotations and citation omitted); *see also Ursic v. Bethlehem Mines*, 719 F.2d

670, 675 (3d Cir. 1983) (“[T]he district court has discretion in determining the amount of a fee award . . . in view of [its] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.”).

Here Class Counsel’s requested attorneys’ fee equal to one third of the Settlement Fund is consistent with the range of fee awards routinely approved by courts in this District and within the Third Circuit. The Court should approve Class Counsel’s request here.

A. The Percentage-of-Recovery Method Is Proper When Awarding Fees in a Common Fund Case.

“Attorneys’ fees requests are generally assessed under one of two methods: the percentage-of-recovery (‘POR’) approach or the lodestar scheme.” *Sullivan*, 667 F.3d at 330. The POR approach is appropriate in cases involving a common settlement fund, *i.e.*, when a settlement contemplates one fund from which class member payments and attorneys’ fees will be paid. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995). Thus, consumer class cases with settlement funds like this Action, courts in this Circuit prefer to award fees as a percentage-of-recovery. *See Sullivan*, 667 F.3d at 330 (POR method “is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure”) (quotations omitted); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3rd Cir. 2005) (same); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3rd Cir. 1998) (same); *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006) (POR method has long been used by Third Circuit in common fund cases).

The POR method, rather than the lodestar method, is favored because lodestar looks only at the value of the time counsel spent working on the case. The POR method provides “appropriate financial incentives” necessary to “attract well-qualified plaintiffs’ counsel who are able to take a case to trial,” and “directly aligns the interests of the class and its counsel.” *In re WorldCom, Inc.*

Sec. Litig., 388 F. Supp. 2d 319, 355, 359 (S.D.N.Y. 2005). Further, the POR method “prevent[s] . . . inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Fickinger v. C.I. Planning Corp.*, 646 F. Supp. 622, 632 (E.D. Pa. 1986) (awarding attorney fees from a common fund avoids “the unjust enrichment of those who otherwise would be benefitted by the fund without sharing in the expenses incurred by the successful litigant”). Put simply, “there is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.” *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000).

Additional reasons exist to apply the POR method. First, it incentivizes attorneys to create the largest common fund out of which payments to the class can be made, so counsel’s interests are aligned with the interests of the class. *Lachance v. Harrington*, 965 F. Supp. 630, 647 (E.D. Pa. 1997) (“[U]nder the POR method, the more the attorney succeeds in recovering money for the client, and the fewer legal hours expended to reach that result, the higher dollar amount of fees the lawyer earns.”). Second, it is consistent with market practices, because it mimics the compensation system used by clients to compensate their attorneys. *Ikon Office Sols.*, 194 F.R.D. at 194. Third, the POR method promotes early case resolution, which is favored. *See In re First Fid. Bancorporation Sec. Litig.*, 750 F. Supp. 160, 162 (D.N.J. 1990) (compared to POR method, lodestar method “penalizes rather than rewards counsel for an early resolution and distribution to class members”). Fourth, the POR method preserves judicial resources because courts do not need to spend time scrutinizing counsel’s billing entries, whereas “[r]equiring the court to calculate the number of hours devoted by counsel and evaluate the services rendered is unrealistically burdensome and time-consuming.” *Id.*

Accordingly, the Court should apply the POR method to analyze Class Counsel's requested fee award pursuant to the common fund Settlement here.

B. Precedent Establishes Class Counsel Are Entitled to a Fee of One-Third of the Settlement Fund.

The Supreme Court has recognized that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole.” *Boeing*, 444 U.S. at 478; *see also Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 393 (1970). Thus, an attorneys’ fees award is appropriate where successful litigation confers substantial benefit on members of an ascertainable class, and where the court’s jurisdiction over the subject matter of the suit makes possible an award that will operate to spread costs proportionately among them. *Hall v. Cole*, 412 U.S. 1, 5 (1973).

Here, Class Counsel are entitled to reasonable attorneys’ fees to compensate them for their work in recovering real value for the Settlement Class. The Settlement Agreement preliminarily approved by the Court provides, “Class Counsel shall apply to the Court for an award of attorneys’ fees of up to one-third of the Settlement Fund, plus reimbursement of reasonable costs,” which if approved “shall be paid by the Settlement Administrator out of the Settlement Fund.” SA ¶ 144. In addition, the Court-approved Long-Form Notice informed the Settlement Class as follows:

20. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award attorneys’ fees of up to 1/3rd of the Settlement Fund (\$200,000), plus reimbursement of reasonable costs. Class Counsel will also ask the Court to approve Service Awards for the Class Representatives of up to \$2,500 each for their efforts. If awarded by the Court, the attorneys’ fees and costs, and the Service Awards will be paid from the Settlement Fund. The Court may award less than these amounts.

SA, Ex. 4.

The Parties and their respective counsel did not discuss the Settlement provisions regarding attorneys’ fees and reimbursement of litigation costs to Class Counsel until after they had already agreed upon the terms of the Settlement in principle, so as to minimize the risk of a conflict

between the interests of the Class Counsel and the Settlement Class. Joint Dec. ¶ 14; *see also In re Prudential*, 962 F. Supp. at 542–43 (finding attorney fee negotiations proper where parties “did not negotiate attorneys’ fees until after they had agreed on the appropriate relief”); *compare In re Gen. Motors*, 55 F.3d at 803 (recognizing “potential for attorney-class conflicts” where settlement terms and fees negotiated simultaneously).

1. One-Third of the Settlement Fund Is Reasonable.

There is no bright-line rule regarding what percentage of the common fund should be awarded as attorneys’ fees under the POR approach; “Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent.” *Ikon Office Sols.*, 194 F.R.D. at 194.

As a benchmark, courts in this District and within the Third Circuit routinely award one-third of the fund in class action settlements similar to this one. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (finding fee award of approximately 33% of settlement fund reasonable when compared with percentages in other class actions); *In re Phila. Inquirer Data Sec. Litig.*, 2025 U.S. Dist. LEXIS 48541, at *37 (E.D. Pa. Mar. 18, 2025) (in data breach case, awarding one-third of settlement fund, which “tracks the median attorneys’ fees in class actions”); *Hall v. AT&T Mobility LLC*, 2010 WL 4053547, at *22 (D.N.J. Oct. 13, 2010) (multiple factors, including “that several courts in similar matters have awarded fees in this amount” warranted approval of one-third fee); *see also Braun v. Phila. Inquirer, LLC*, 2025 U.S. Dist. LEXIS 85786, at *33 (E.D. Pa. May 6, 2025) (noting “[a] one-third flat percentage fee award has been approved in data privacy case that resolved by settlement”). Accordingly, Class Counsel’s request is reasonable and well within the range approved in similar consumer class actions.

2. No Lodestar Analysis Is Required

In cases involving a common fund and utilizing a percentage-of-recovery method to compute requested attorney fees, no court within the Third Circuit mandates the use of a detailed lodestar analysis to cross check the amount sought. *See In re Rite Aid Corp.*, 396 F.3d at 305 (citing *In re Prudential*, 148 F.3d at 333); *Bodnar v. Bank of Am., N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016); *In re AT&T*, 455 F.3d at 164 (lodestar analysis does not displace district court’s primary reliance on percentage of recovery method); *In re Suprema Specialties, Inc. Sec. Litig.*, 2008 WL 906254, at *8 (D.N.J. Mar. 31, 2008).

In fact, not mandating a lodestar cross check preserves judicial resources because it relieves the court of the “cumbersome, enervating, and often surrealistic process” of evaluating fee petitions. *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (noting opting against a lodestar cross check “conserves scarce judicial time”); *see also Savoie v. Merchants Bank*, 166 F.3d 456, 461 n.4 (2d Cir. 1999); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48–49 (2d Cir. 2000) (the “primary source of dissatisfaction [with the lodestar method] was that it . . . compel[ed] district courts to engage in a gimlet-eyed review of line-item fee audits”).

Requiring a lodestar cross-check would not be a productive use of judicial resources here, given that lodestar “multiples ranging from 1 to 8 are often used in common fund cases” to “compensate counsel for the risk of assuming the representation on a contingency fee basis.” *Stevens v. SEI Investments Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16). Based on the work performed to date and the additional work needed to be done by the lawyers and professionals involved here, there is no doubt that if a cross-check were to be performed for all the lawyers that spent time representing the Plaintiffs in this Action, the lodestar would be well within the range recognized by Third Circuit courts. *See Joint Dec.* ¶ 44;

see also, e.g., *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *15 (D.N.J. June 15, 2020), *adopted* 2021 WL 358611 (D.N.J. Feb. 1, 2021); *Bodnar*, 2016 WL 4582084, at *5–6 (approving 33% fee where counsel was able to negotiate the settlement “at the early stages” of the litigation, finding 4.69 multiplier “appropriate and reasonable”); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving fee award “with a 6.96 multiplier”). Creating a detailed lodestar analysis here, and performing a review of such an analysis, would be a very time-consuming and extensive process, especially given the fact that it would likely result in confirmation of the requested fee. For that reason, Class Counsel does not include a detailed lodestar analysis herewith.³

3. Calculating the Fee Based on Settlement’s Overall Value Is Appropriate

As for “calculating the overall settlement value for purposes of the ‘percentage of the recovery’ approach,” courts “include the value of both the monetary and non-monetary benefits conferred on the Class.” *Fleisher v. Phoenix Life Ins. Co.*, 2014 WL 10847814, at *15 (S.D.N.Y. Sept. 9, 2015) (citation omitted); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *4, *18 (S.D.N.Y. Nov. 30, 2010) (awarding fees on value of settlement, including monetary and nonmonetary relief). Where, as here, a settlement also provides for non-monetary relief that “cannot be quantified,” such relief nonetheless “represents additional recovery for the settlement class” and supports the award of the requested fees.” *In re Phila. Inquirer Data Sec. Litig.*, 2025 U.S. Dist. LEXIS 48541, at *33–34.

³ If the Court disagrees and requires that such an analysis be undertaken, Class Counsel will provide their lodestar before the Final Approval Hearing. See, e.g., *In re Rite Aid Corp Sec. Litig.*, 396 F.3d at 306-07 (“cross-check calculation need entail neither mathematical precision nor bean-counting. . . . courts may rely on summaries submitted by the attorneys and need not review actual billing records”); *In re Ins. Brokerage Antitrust Litig.*, 2007 WL 1652303, at *9 (D.N.J. June 5, 2007) (“court may rely on summaries submitted by the attorneys, and is not required to scrutinize every billing record”).

For example, in *Philadelphia Inquirer*, like this case, the settlement established a common fund to pay class members' claims for cash payments and credit monitoring, settlement administration costs, attorneys' fees and costs, and service awards, as well as nonmonetary relief via the defendant's data security improvements. *Id.*, at *6–7. The court found the nonmonetary benefit “represents additional recovery for the settlement class and future consumers whose data will be entrusted to Defendant,” further supporting the requested 33.33% fee. *Id.*, at *33–34. Likewise here, while the benefit of Defendant DG3's data security improvements under the Agreement is not readily quantified, it represents significant additional value to the Settlement Class that further supports Class Counsel's request for one-third of the Settlement's monetary relief.

C. Additional Relevant Factors Support the Requested Fee Award

Other factors established to determine the reasonableness of fee awards under the POR method similarly support Plaintiffs' requested fee award. These factors include (1) the size of the fund created and number of persons benefiting from the settlement; (2) the presence/absence of substantial objections to the fee; (3) the skill of plaintiffs' counsel; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the litigation; and (7) awards in similar cases. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195, n.1 (3rd Cir. 2000). The Third Circuit has also suggested three other factors that may be relevant to a court's inquiry: (1) “the value of benefits accruing to class members attributable to the efforts of counsel as opposed to the efforts of other groups, such as government agencies conducting investigations;” (2) “the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained;” and (3) “any ‘innovative’ terms of settlement.” *In re AT&T*, 455 F.3d at 165 (citation omitted); *Public Interest Research Group v.*

Windall, 51 F.3d 1179, 1185 n.8 (3d Cir.1995) (discussing “Johnson factors” set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-18 (5th Cir. 1974)).

These factors “need not be applied in a formulaic way, and their weight may vary on a case-by-case basis.” *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, 2009 WL 2137224, at *14 (E.D. Pa. July 16, 2009) (quoting *Oh v. AT&T Corp.*, 225 F.R.D. 142, 146 (D.N.J. 2004)); *In re AT&T*, 455 F.3d at 165-66 (“What is important is that the district court evaluate what class counsel actually did and how it benefitted the class”); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *6 (D.N.J. Nov. 28, 2007).

The most significant factor . . . is the quality of representation, as measured by ‘the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.

In re Ikon Office Solutions, 194 F.R.D. at 194 (internal citations omitted). The relevant factors support the reasonableness of Class Counsel’s fee request here.

1. Whether the Fee Was Fixed or Contingent

Class Counsel undertook this action on an entirely contingent fee basis, and in doing so assumed a substantial risk that counsel would have to devote a significant amount of time and incur expenses in prosecuting this action without any assurance of being compensated for their efforts. Joint Dec. ¶¶ 42-3. As such, Class Counsel has effectively advanced their legal services to the Settlement Class since that time. *See Lindy Bros. Builders of Philadelphia v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116-17 (3d Cir. 1976).

Further, taking on this complex case served to precluded Class Counsel from other employment due to time and budget restrictions based on the acceptance of this matter. Joint Dec. ¶ 43. Class Counsel are relatively small law firms with busy practices. *Id.* Class Counsel were

required to forego other opportunities to properly prosecute this case, meaning the firms involved on behalf of the Plaintiffs expended a great deal of time and effort on this matter at the expense of other potentially lucrative matters. *Id.*

Courts have consistently recognized that the risk of receiving no recovery is a factor in considering an award of attorneys' fees. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 219 (E.D. Pa. 2011) (risk at trial and contingency basis "indicates that substantial attorney's fees should be awarded")

. As one court articulated,

Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review is unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

In re Prudential-Bache Income Partnerships Sec. Litig., 1994 WL 202394, at *6 (E.D. La. May 18, 1994).

Here, Class Counsel expended significant time and costs to prosecute this Action. Joint Dec. ¶¶ 43-4. They aggressively advanced this case despite substantial risk of non-payment. *Id.* That risk is especially heightened here given that "data breach cases are inherently risky and present unique challenges to establish standing and obtain class certification . . . [s]o, there was a real risk of nonpayment." *In re Onix Grp., LLC Data Breach Litig.*, 2024 U.S. Dist. LEXIS 225686, at *41 (E.D. Pa. Dec. 13, 2024) (awarding 33.33% of fund); *see also Reynolds v. Marymount Manhattan College*, 2023 U.S. Dist. LEXIS 191993, at *5 (S.D.N.Y. Oct. 23, 2023) ("novel, evolving and complex nature of data breach" class actions justified requested fee award).

Despite the risks and difficulties presented, Class Counsel forged a significant resolution that provides substantial relief to the Settlement Class. Accordingly, Class Counsel's significant risk of

non-payment now favors approval of the requested fee.

2. The Time and Labor Required, the Size of the Fund Created, the Number of Persons Benefiting from the Settlement, the Novelty and Difficulty of the Questions Involved, and the Skill, Experience, Reputation, and Ability of Counsel Required to Perform the Service Properly.

Class Counsel undertook a number of important tasks litigating the Action, requiring a significant amount of Class Counsel's time and labor to develop the legal theories and arguments presented in the pleadings. Joint Dec. ¶ 44. These tasks included initial investigation of the case; researching complex issues of law and potential causes of action; client vetting and meetings; drafting numerous the initial complaints and Amended Complaint; conducting pre-mediation discovery; drafting and exchanging comprehensive mediation statements in advance of mediation; preparing for and participating in mediation; and negotiating the Settlement and filing Settlement approval papers. *Id.* ¶¶ 7, 22, 44. Moreover, Class Counsel's work is not yet done. Class Counsel will be required to, among other tasks, continue to monitor the Claims Process and communicate with the Settlement Administrator, prepare for and attend the Final Approval Hearing, monitor distribution of Settlement Class Member Benefits, and potentially handle any post-judgment appeals. *Id.* ¶¶ 22, 37.

The skill required of Class Counsel to accomplish this excellent Settlement warrants the requested fee award. The "single clearest factor reflecting the quality of Class Counsels' services to the Class are the results obtained." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include "the difficulties faced, the speed and efficiency of the recovery, the standing, experience, and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008). *Gunter* factors are considered to ensure "competent counsel continue to undertake risky, complex and novel litigation" for the benefit of

large classes whose members might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198. Here, Class Counsel obtained monetary and non-economic relief for approximately 53,000 members of the Settlement Class. Class Counsel have unique legal skills and abilities, as well as comprehensive experience litigating consumer class actions data privacy class actions in particular. Joint Dec. ¶¶ 15, 21, 35. Class Counsel called on those unique skills and experience to litigate and successfully settle this Action, without which, the Settlement Class would have received no benefit at all. *Id.*

In addition, “[t]he quality of opposing counsel is also important in evaluating the quality of plaintiffs’ counsel’s work.” *Hall*, 2010 WL 4053547, at *19; *In re OSB Antitrust Litig.*, 2008 U.S. Dist. LEXIS 125173, at *13-14 (E.D. Pa. Dec. 9, 2008) (in assessing quality of representation, courts also look to “the performance and quality of opposing counsel”). Defendants’ counsel in this Action are highly experienced class action attorneys at elite law firms. Joint Dec. ¶¶ 28, 35. There is little doubt that Defendants’ counsel have the resources, reputation, and experience to vigorously and effectively advocate for Defendants’ interests were this Action to be litigated further. Despite Defendants’ staunch resistance, Class Counsel’s efforts resulted in a fair, adequate, and reasonable Settlement for the Settlement Class.

3. The Current Absence of Objections to the Attorneys’ Fee Request Supports Approval.

The absence or a minimal number of objections to a fee request is significant evidence that the request is fair and reasonable. *See, e.g., In re Rite Aid*, 396 F.3d at 305; *In re AT&T Corp.*, 455 F.3d at 170 (awarding fee despite eight objections); *In re Datatec Sys.*, 2007 WL 4225828 at *7 (no objections weighs “strongly in favor” of approval); *In re Genta Sec. Litig.*, 2008 WL 2229843, at *9 (D.N.J. May 28, 2008) (awarding fees despite objection).

To date, there have been no objections to the Settlement or Class Counsel’s requested fee

award, and only one member of the Settlement Class has opted out. Admin Dec. ¶ 32. By comparison, almost 53,000 Settlement Class Members received direct Notice and are entitled to submit Claims for Settlement Class Member Benefits. *Id.* ¶ 28. The lack of objections to the Settlement or Class Counsel’s requested attorneys’ fee and cost award weighs strongly in favor of approval.

4. The Requested Attorneys’ Fees Are Reasonable When Compared to Awards in Similar Cases and What Would Have Been Contracted in a Private Contingency Matter

Similar data breach and consumer class actions have resulted in similar attorneys’ fee awards, further demonstrating the reasonableness of Class Counsel’s request. *See, e.g. In re Phila. Inquirer Data Sec. Litig.*, 2025 U.S. Dist. LEXIS 48541, at *37 (E.D. Pa. Mar. 18, 2025) (awarding \$175,000 attorney fee from \$525,000 common fund (approximately 33.33% of fund) in data breach class action); *In re Onix Grp., LLC Data Breach Litig.*, 2024 U.S. Dist. LEXIS 225686, at *41 (E.D. Pa. Dec. 13, 2024) (awarding 33.33% of fund in data breach class action).

Additionally, the requested fee here is entirely consistent with the private marketplace where attorneys negotiate contingency fee agreements. Courts in the Third Circuit have reasoned that the POR method of awarding attorneys’ fees in class actions should approximate the fee which would be negotiated if the lawyer were offering his or her services in the private marketplace. *See, e.g. In re Ikon Solutions*, 194 F.R.D. at 194 (“In private contingency fee cases, particularly in tort matters, plaintiffs’ counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery”); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) (“[A]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.”); *Fanning v. Acromed Corp.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting plaintiffs’ counsel in private contingency fee cases

regularly negotiate agreements providing for 30 to 40 percent of any recovery). Given that the customary contingency fee would range from 30% to 40% of the total recovery were this Action was not class action litigation, the requested here is reasonable for New Jersey and the Third Circuit.

* * * *

All relevant factors strongly support the requested attorneys' fee. Thus, Class Counsel respectfully request the Court's approval of a \$200,000.00 fee award, equal to one-third of the Settlement Fund.

II. Class Counsel Should Be Awarded Reimbursement of Litigation Costs

Rule 23 expressly permits reimbursement of costs and expenses in a class action. *See* Fed. R. Civ. P. 23(h) (permitting award of "nontaxable costs that are authorized by law or by the parties' agreement"). Indeed, reimbursement for costs expended by counsel in prosecuting a class action is "routinely permitted." *In re Remeron*, 2005 WL 3008808 at *17.

Here Class Counsel request reimbursement for a total of **\$18,855.56** in litigation costs and expenses, which has essentially been advanced to the Settlement Class. Joint Dec. ¶ 40; *see also Oh*, 225 F.R.D. at 154 ("[C]ounsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case."). The categories of expenses for which Class Counsel seek reimbursement here are the type of expenses routinely charged to paying clients in the marketplace and, therefore, the full requested amount should be reimbursed. *See* Joint Dec. ¶ 40. These expenses are reasonable and justified. *See, e.g., In re Certaineed Fiber Cement Siding Litig.*, 303 F.R.D. 199 (E.D. Pa. 2014) (approving \$304,996.65 in costs that included similar categories as those requested here). The Court should accordingly award Class Counsel reimbursement of \$18,855.56 in expenses paid

from the Settlement Fund, consistent with the Settlement Agreement.

III. The Requested Service Awards to Class Representatives Are Reasonable.

Service awards in a class action are meant “to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *56 (D.N.J. May 14, 2012); *see also Huguley v. General Motors Corp.*, 128 F.R.D. 81, 85 (E.D. Mich. 1989), *aff’d* 925 F.2d 1464 (6th Cir. 1989) (“Named plaintiffs and witnesses are entitled to more consideration than class members generally because of the onerous burden of litigation they have borne.”).

Here a Service Award of \$2,500.00 is requested for each of the two Class Representatives. SA ¶ 143. Numerous courts have approved service awards to class representatives in amounts far greater than the conservative Service Awards sought here. *See, e.g., Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *24 (D.N.J. Apr. 8, 2011) (\$10,000 per class representative); *In re Remeron*, 2005 WL 2230314, at *32–33 (\$30,000 for two class representatives and \$5,000 for three others); *Hanrahan v. Britt*, 174 F.R.D. 356, 369 (E.D. Pa. 1997) (total of \$25,000 to two named plaintiffs); *See also* 5 Newberg on Class Actions § 17.8 (citing empirical studies on award size showing “the average award per plaintiff ranged from \$9,355 (in 2002 dollars) in one study to \$15,992 (in 2002 dollars) in the other”).

The proposed Service Awards are warranted given that without Class Representatives’ efforts, there would have been no litigation and no recovery for the Settlement Class. Class Representatives assisted Class Counsel with investigating the Action, preparing the initial complaints and the Amended Complaint, providing information to support their claims, staying abreast of Settlement negotiations, and reviewing and approving the Settlement terms. Joint Dec. ¶¶ 37-8. The requested Service Awards will compensate the Class Representatives for expending

such time and effort and recognize the benefit Class Representatives helped obtain for thousands of their fellow Settlement Class Members. *Id.* The requested Service Awards of \$2,500.00 for each Class Representative are reasonable and should be approved.

IV. The Settlement Administration Costs Are Reasonable.

The Settlement Administration Costs invoiced to date total \$69,574.54. Admin Dec. ¶ 37. Additional costs will be incurred leading up to and following the Final Approval Hearing to complete all aspects of the settlement administration. *Id.* These include costs incurred for the Notice Program, and the remaining portion of which will be incurred for the Claims Process and distribution of Settlement Class Member Benefits following Final Approval, along with other Settlement Administration services outlined in the Settlement Agreement. *Id.* The Settlement Administrator here has exhibited highly qualified skills throughout the entire process. *See* Joint Dec. ¶ 49. These costs are required to complete the Settlement, are reasonable, and should be approved.

CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that this Court (a) award Class Counsel \$200,000 for attorneys' fees and \$18,855.56 for reimbursement of reasonable litigation costs and costs; (b) approve a \$2,500 Service Award to each Class Representative; and (c) approve the payment of the Settlement Administration Costs. The proposed Final Approval Order, filed with the Motion for Final Approval, contains provisions for the relief requested in this Motion.

Dated: September 2, 2025

Respectfully Submitted,

By: s/ Kenneth J. Grunfeld

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